

Policies and Procedures

Subject: Uses and Disclosures of PHI Regarding Victims of Abuse, Neglect, or Mistreatment

Policy Number: HIPAA 4.4

Effective Date: 6/21/04

Entity Responsible: Division of General Counsel

Revision Date: 1/11/18

1. Purpose:

This policy provides instruction and guidance on the uses and disclosures of protected health information (PHI) about victims of abuse, neglect, mistreatment, under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and pursuant to the Tennessee Code Annotated (T.C.A) and relevant departmental policy.

2. Purpose:

2.1: All employees of the Tennessee Department of Mental Health and Substance Abuse Services (TDMHSAS) and Regional Mental Health Institutes (RMHIs) must report suspected cases of abuse, neglect, or mistreatment involving a service recipient, or any person whom the TDMHSAS or RMHI employee reasonably believes is a victim of abuse, neglect, or mistreatment to a law enforcement official or to an agency authorized to receive such information. In many instances of suspected abuse, neglect, or mistreatment, a service recipient's PHI must be disclosed to assist in the investigation of abuse, neglect, or mistreatment.

2.2: Pursuant to T.C.A. §33-3-111, in the case of a known accusation of physical or sexual abuse of a child, the child's PHI shall not be accessible to the accused unless: (1) a court orders the disclosure; or (2) the child's qualified mental health professional, after consulting with the child, the child's guardian ad litem, and others on the child's behalf, has determined the disclosure appropriate, and the accused is the child's parent, legal guardian, legal custodian, or legal caretaker of

the child. If the court permits access to the child's records, the court has jurisdiction to issue orders limiting access to and use of the information by the person seeking access, including the granting of injunctive relief. In this instance, state law provides greater privacy protections than HIPAA, and thus preempts HIPAA.

- 2.3: The identity of a person reporting abuse, neglect, or mistreatment is confidential and may not be disclosed without the consent of the person reporting it or by a court order, except to investigators or the district attorney to carry out the laws of reporting abuse, neglect, or mistreatment.

3. Procedure

- 3.1: In instances concerning allegations of abuse, neglect, mistreatment, any TDMHSAS or RMHI employee who receives a request for the use or disclosure of PHI from a law enforcement official, the Department of Children's Services (DCS), the Department of Human Services (DHS), the Tennessee Bureau of Investigation (TBI), sheriff or other public official authorized to receive such information must refer the request to the TDMHSAS Privacy Officer or the RMHI Privacy Officer as soon as practicable. After receiving this information, the TDMHSAS Privacy Officer must notify the TDMSAS's General Counsel, and the RMHI Privacy Officer must notify the RMHI attorney as soon as practicable.
- 3.2: If the TDMSAS Privacy Officer or the RMHI Privacy Officer or the TDMSAS' General Counsel or the RMHI attorney determines that the use or disclosure is appropriate, the information must be release to the requesting party within ten (10) working days from the date the request was received. If the TDMSAS Privacy Officer or the RMHI Privacy Officer or the TDMSAS' General Counsel or the RMHI attorney determines that use or disclosure is not appropriate, the requesting party must be notified of this determination within ten (10) working days from the date the request was received.
- 3.3: Tennessee law mandates that child abuse, neglect, or mistreatment be reported to the County office of the Department of Children's Services, to the judge having juvenile jurisdiction over the child, or to the sheriff or chief law enforcement official where the child resides. If there is a question as to which agency should receive the report, the Department of Children's Services is best equipped to handle such reports. Instances of abuse, neglect, or mistreatment of adults must be reported to the Department of Human Services—Adult Protective Services, which is responsible for investigation and necessary follow-up, or to Disability Rights Tennessee.

- 3.4: Reporting of abuse, neglect, or mistreatment to appropriate state agencies does not relieve the TDMHSAS or the RMHI of its duty to investigate instance of allegations of abuse, neglect or mistreatment that may have occurred in an RMHI. Such investigations may be coordinated with other state agencies to avoid duplication efforts.
- 3.5: HIPAA provides that state law controls with the respect to the uses and disclosures of PHI relative to investigations of such matters; therefore, the TDMHSAS or RMHI must follow applicable state laws regarding disclosures of PHI in cases of abuse, neglect, or mistreatment.
- 3.6: All members of the TDMHSAS or the RMHI workforce with reasonable cause to suspect that a service recipient has been the victim of abuse, neglect, or mistreatment, must report the suspected abuse, neglect, or mistreatment. HIPAA Regulation 45 CFR § 164.512 permits a covered entity, such as the TDMHSAS or the RMHI, to exercise its professional judgement in determining if the disclosure is necessary to prevent serious harm to the individual or others. However, T.C.A. §§ 37-1-401 and 71-6-103 require reporting the abuse, neglect, or mistreatment if such person has reasonable cause to believe that abuse, neglect, or mistreatment has occurred.
- 3.7: Failure to report suspected child abuse, neglect, or mistreatment may give rise to civil liability, but persons reporting suspected child abuse, neglect, or mistreatment are presumed to be acting in good faith, and are immune from liability.
- 3.8: The TDMHSAS or the RMHI Privacy Officer/ designee who disclose PHI must document all disclosures, absent a valid authorization, on a disclosure log kept in the service recipient's record. A copy of the written request for disclosure must also be placed in the service recipient's record. Disclosures of PHI may also be entered into an electronic log. This disclosure log should be kept for a minimum of six (6) years from the date the request for disclosure was received.
- 3.8.1: The disclosure log must include (1) date of the disclosure, (2) name of the individual of entity who received the PHI, and if known, their address, (3) a brief description of PHI disclosed, and (4) a brief statement of the purpose of the disclosure that reasonably describes the basis of the disclosure.

4. Other Considerations

4.1: Authority

45 CFR §164.512; TCA §§ 33-3-103, 108, 110, 111; 37-1-605; 71-6-103, 105.

Approved:

Marie Williams

Commissioner

1-11-18

Date